

## CPS ADMINISTRATIVE HEARINGS

Enclosed in the web site are handouts that can help you prepare for a CPS Administrative Hearing. These handouts can not take the place of the 2 day training but can be helpful to you if you have not been able to attend the training before an impending hearing.

### INTRODUCTION:

CPS expunction hearings deal exclusively with CA/N as defined in the Child Protection Law and FIA policy. **Does this case belong on the Central Registry?**

A CPS Administrative Hearing is a de novo hearing, which means it is a new hearing. This type of hearing is very similar to a trial and normally scheduled for one full day. During these hearings evidence will be presented by the petitioner and the agency. The CPS supervisor is normally the agency presenter. ALJ's will hear the evidence presented at the hearing and use current law and agency policy to make there decision.

The Agency has the burden of proof. The agency must prove by a preponderance of evidence that child abuse and/or neglect happened and, if it is a post July 1999 case, that Risk Level was correctly assessed.

**DIRECT EXAMINATION OF**  
**PROTECTIVE SERVICE WORKER**

(Can be modified for any witness)

**Presented:**

**Q. Would you state your name and spell it for the record?**

**A.**

**Q. What is your educational background?**

**A.**

**Q. Where are you employed?**

**A.**

**Q. What is your position?**

**A.**

**Q. Did you participate in abuse and neglect training provided by the Agency?**

**A.**

**Q. What course did you attend?**

**A.**

**Q. How long have you been a Protective Service Worker?**

**A.**

**Q. How many Protective Service complaints have you investigated?**

**A.**

**Q. How many involved \_\_\_\_\_? (Type of case you have, physical, sexual, mental, neglect)**

**A.**

**Q. Where you assigned to investigate a complaint dated \_\_\_\_?**

**A.**

**Q. Did you interview \_\_\_\_\_ (child's name)?**

**A.**

**Q. When did you interview \_\_\_\_\_ (child's name)?**

**A.**

**Q. Where did the interview take place?**

**A.**

**Q. Who was present?**

**A.**

**Q. What type of interview technique did you use?**

**A.**

**Q. Did \_\_\_\_\_ (child's name) have appropriate development and verbal skills?**

**A.**

**Q. What did \_\_\_\_\_ (child's name) tell you?**

**A.**

**Q. What did you observe?**

**A.**

**Q. Where were the \_\_\_\_\_ (bruises, welts, etc)?**

**A.**

**Q. Were the injuries consistent with what \_\_\_\_\_ (child's name) told you?**

**A.**

**Q. Did you take a photograph?**

**A.**

**Q. Are these the photographs you took?**

**A.**

**PROPOSE THE PHOTOGRAPHS AS AN AGENCY EXHIBIT.**

Continue to ask questions of the CPS worker to elicit relevant information that is necessary to prove your case – information and interviews with petitioner, other participants, medical reports, police reports, etc.

**Q. Are you required by agency policy to prepare an investigation report as a normal course of business?**

**A.**

**Q. Did you prepare an investigation report in for case?**

**A.**

**Q. Is this a copy of the report you prepared?**

**A.**

**PROPOSE THE REPORT AS AN AGENCY EXHIBIT.**

**Q. Did your investigation lead you to find by a preponderance of evidence that \_\_\_\_\_ (abuse &/or neglect) occurred?**

**A.**

**Q. What section of the law (statute) and policy did you use in reaching your conclusion?**

**A.**

**Q. Is this a copy of the law and policy?**

**A.**

***(STOP HERE FOR PRE-JULY 1999 CASES)***

**Q. What other tools did you use to make your decision?**

**A. (Risk, N/S, Safety Assessments)**

**Q. Did you complete a Safety Assessment?**

**A.**

**Q. Is this a copy of the Safety Assessment you completed?**

**A.**

**Q. What safety concerns did you designate and why?**

**A.**

**PROPOSE THE SAFETY ASSESSMENT AS AN AGENCY EXHIBIT**

**Q. Did you complete a Family Assessment of Needs?**

**A.**

**Q. Did you use agency policy and definitions to complete the Family Assessment of Needs?**

**A.**

**Q. Is this a copy of the Family Assessment of Needs you completed?**

**PROPOSE THE FAMILY NEEDS ASSESSMENT  
AS AN AGENCY EXHIBIT.**

**Q. Did you complete a Risk Assessment?**

**A.**

**Q. Is this the Structured Decision Making tool required by the law?**

**A.**

**Q. Is this a copy of the Risk Assessment you completed?**

**A.**

**Q. Did you follow agency policy and definitions in the completion of the Risk Assessment?**

**A.**

**Q. Would you give a brief summary of the purpose of the Risk Assessment?**

**A.**

**PROPOSE THE POLICY AND DEFINITIONS AS AN AGENCY  
EXHIBIT (RE: RISK ASSESSMENT FOR CATEGORIES I, II, III)**

**PROPOSE THE RISK ASSESSMENT AS AN AGENCY EXHIBIT.**

**Q. Would you go over each of the questions and explain why you scored it the way you did? (If an override was used, ask for an explanation.)**

**A.**

**Q. Are you required under agency policy to use the highest score on either the abuse or neglect scale to establish the risk level?**

**A.**

**Q. What risk level was established?**

**A.**

**Q. What Category was required by agency policy?**

**A.**

**Q. What section of the law (statute) did you use in making the determination?**

**A.**

**Q. Did you place \_\_\_\_\_ (petitioner's name) on the Central Registry (IPRI) as a perpetrator of \_\_\_\_\_ (Cat I or II) (abuse or neglect).**

**PROPOSE THE I.P.R.I. AS AN AGENCY EXHIBIT**

# **ROLE OF THE CPS SUPERVISOR:**

## **1. Before the hearing, the CPS supervisor must:**

- Decide whether to expunge the record
- Hold a pre-hearing conference with petitioner
- Prepare the Hearing Summary, FIA3050
- Decide what witnesses to call
- Decide what exhibits to offer
- Prepare the witnesses for hearing
- Request subpoenas

## **2. At the hearing, the CPS supervisor:**

- Functions as a presenter and makes opening statement
- Questions, the CPS worker (direct examination), including the presentation of exhibits, and other witnesses.
- Should make sure that he or she has sufficient copies of the exhibits.
- Raises objections during the hearing and cross-examines the petitioner and other witnesses offered by the petitioner.
- May present exhibits through these other witnesses. (Lay a foundation)
- Also presents a closing statement.
- Generally the CPS supervisor should not testify if there are other witnesses who can present firsthand evidence on the issues.
  - If the supervisor testifies, it should only be about those events within the supervisor's knowledge (for instance, an interview with the perpetrator).

## **3. After hearing, the CPS supervisor:**

- May present a post-hearing brief.
- May file requests for rehearing.

**Remember: The CPS supervisor has a great deal of flexibility to expunge prior to the hearing! Review those cases before you go to a hearing. Have a pre-hearing conference with petitioner/atty.**

## **CPS EXPUNCTION HEARINGS**

For expunction hearings on **cases investigated post 7-1-1999** and entered on the Child Abuse and Neglect Central Registry, ALJ's will need to **decide two different issues**:

- Do the facts of the case support a finding, based on **preponderance of the evidence**, that child abuse/neglect as defined in the Child Protection Law did occur;
- Do the facts of the case as they appear at the time of the hearing support **classification** as a Category I or Category II case?

For expunction hearings on **cases investigated pre 7-1-1999** and entered on the Child Abuse and Neglect Central Registry, ALJ's will need to decide only this issue:

- Do the facts of the case support a finding, based on **preponderance of the evidence**, that child abuse/neglect as defined in the Child Protection Law did occur;

### **CATEGORY I**

- Court petition is required under Section 17 or 18 of the Child Protection Law;
- The child is not safe and a family court petition for removal was needed;
- The agency previously classified the case as Category II and the child's family did not voluntarily participate in services; and
- There is a violation involving a child of criminal sexual abuse or criminal child abuse in the first or second degree.



## **FIA3050: HEARING SUMMARY PREPARATION**

(see HO 5)

### **In the hearing summary, clearly state:**

- Date of Complaint
- Who is the perpetrator?
- Who is the victim?
- What is the child abuse and/or neglect issue?
- If there is more than one charge of CA/N, specify.
- State administrative facts: investigation, confirmed, request for hearing denied, etc.
- If using a support person at the hearing, name and relationship of the person.
- If post 7-1-99 state category classification and why.
- Law and policy citation (see HO 5)
- Witness list (see HO 6)
- Subpoena list (see HO 6)
- Exhibits list (see HO 6)
- If a case of override from Category III to Category II, why?

**HEARING SUMMARY**  
State of Michigan  
Family Independence Agency  
ADMINISTRATIVE HEARINGS

The Family Independence Agency will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to an FIA office in your county.

Case Name <b>CASE NAME</b>				Phone Number <b>XXX XXX-XXXX</b>	
Address <b>1234 STREET NAME</b> <b>ANY TOWN, MI XXXXX</b>					
Program(s) In Dispute <b>CPS</b>				Case Number <b>V0000000P</b>	
County <b>33</b>	District <b>00</b>	Section <b>00</b>	Unit <b>09</b>	Specialist <b>04</b>	Date <b>CURRENT</b>

**CLIENT REQUESTED HEARING REGARDING ASSISTANCE OR SERVICE ACTIONS:**

1. Date Hearing Request Received by FIA <b>COMPLETE</b>		2. Date client notified of agency action <b>COMPLETE</b>		3. Effective date of action	
4. Date of Administrative Review <b>COMPLETE</b>		5. Actions prompting Hearing Request <input type="checkbox"/> Termination <input type="checkbox"/> Denied Application <input type="checkbox"/> Reduction <input checked="" type="checkbox"/> CPS Expunction Denial <input type="checkbox"/> Other:			
6. Deleted pending hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No			7. Date Claimant Offered Case Conference <b>COMPLETE</b> <input checked="" type="checkbox"/> Accepted <input type="checkbox"/> Rejected		
8. Amount of Monthly Benefits Before Negative Action    After Negative Action		9. Employment related activities? <input type="checkbox"/> Yes <input type="checkbox"/> No			
10. Programs Impacted By the Agency Action: <input type="checkbox"/> FIP <input type="checkbox"/> FS <input type="checkbox"/> MA <input type="checkbox"/> SDA <input type="checkbox"/> SMP <input type="checkbox"/> CDC <input checked="" type="checkbox"/> CPS <input type="checkbox"/> ADOPTION SUBSIDY <input type="checkbox"/> SER <input type="checkbox"/> OTHER:					

**AGENCY REQUESTED HEARING:**

<input type="checkbox"/> Intentional Program Violation (IPV)	<input type="checkbox"/> Debt Collection
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Explanation of action taken and facts and fact sources used in taking action:

FIA recieved a report of child abuse dated November,XX,2000. Upon investigation, it was established by a preponderance of the evidence that the victim\_\_\_\_\_, DOB October XX, XXXX, was struck by her father's live-together partner, \_\_\_\_\_, with her hand causing a bruise on the victim's right buttocks. A medical examination revealed an injury that was consistent with the victim's statment. Ms.\_\_\_\_\_'s request for an expungment of her name from the Child Abuse and Neglect Central Registry was denied. Child abuse is harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through nonaccidental physical or mental injuries. A nonaccidental injury is an injury that is expected, intentional, incidental, and / or planned behavior on the part of the person responsible for the child's health or welfare. It is an action that a reasonable person would expect to be proximate cause of an injury.MCL. 722.622(c)

This is a Category II case with a risk level of high. ( If the case is a Category III that was escalated to a II due to failure to particpate or overrides, add that information and why.)

Attached witness list.

Attached proposed exhibits.

Attached request for supoenas.

If needed/add info about:

Support Person

Collateral Estoppel

Law and regulation(s) or manual item(s) used in taking action:

MCL 722.622(c) (CPL Sec.2(c)), MCL 722.622(e) (CPL Sec.2 (e)), MCL 722.628 d (CPL Sec. 8d)  
CFP 711-5 p.1&2, CFP 713-11 p.1&2 p.4-12, CFP 713-12 p.1-10, CFP 718-2 p.14 & 15

Prepared by <b>Jane Doe, CPS Supervisor</b>	Date <b>XX/XX/XXXX</b>
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Attach a copy of papers to be used at the hearing, INCLUDING MEDICAL INFORMATION where in issue. Submit original Hearing Summary WITHIN 15 DAYS of receipt of the hearing request to: FIA, Administrative Hearings, P.O. Box 30639, Lansing, MI 48909-8139. DISTRIBUTE one copy of this Summary.

## **CATEGORY II**

- The structured decision making tool (Risk Assessment) indicates high or intensive risk of future harm. Section 8d(1)(d) of the Child Protection Law;
- The matter was escalated from Category III to Category II because the child's family did not voluntarily participate in services, or did not progress toward alleviating the child's risk level. Section 8d(1)(c) of the Child Protection Law.

[NOTE: ALJs conduct de novo hearings. The ALJ will decide, based upon the hearing record presented, whether child abuse and/or neglect occurred and for cases investigated after 7-1-99, what the proper case category is.]

Local office staff will need to present evidence that abuse and/or neglect, as defined in the Child Protection Law and FIA policy, did occur in all CPS expunction hearings. For post 7-1-1999 cases, local office staff also need to present evidence that the case is, or should be, properly classified as a Category I or Category II case. This evidence will include information about how the structured decision making tool was used and the risk assessment findings that resulted.

In addition to denying that abuse or neglect took place, petitioners may wish to argue that the case does not meet the criteria for Category I, or that some of the factors were weighed incorrectly and challenge the risk assessment. Both ALJ's and local office staff must be prepared to handle evidence about the structured decision making tool, how it is used, and the resulting risk assessment/category.

CASE NAME  
CASE NUMBER

**WITNESS LIST**

1. \_\_\_\_\_, CPS Worker
2. \_\_\_\_\_, M.D. -- **Subpoena**  
Full address  
Can testify to medical examination.
3. \_\_\_\_\_, (therapist) -- **Subpoena**  
Full address  
Can testify to statements made by the child to her.
4. \_\_\_\_\_, (mother) -- **Subpoena**  
Full address  
Can testify to observations or injury and statement made by child.
5. \_\_\_\_\_, (victim) -- **Subpoena**  
Can testify to events leading up to and actual, injury.

**PROPOSED EXHIBITS ATTACHED:**

- CPS Investigative Report
- Safety Assessment
- Needs and Strength Assessment
- Risk Assessment
- Service Manual Policy reference
- IPRI
- CFP 718.2 p 14 &15 (role codes)
- Medical Report
- Photographs
- Police report
- Drawings of location of event
- Transcript of depositions/court proceedings

## CHART OF ELEMENTS TO BE PROVEN CASE EXAMPLE

**What you are trying to prove:** Petitioner disciplined the child by hitting on the buttocks causing injures.

### ELEMENTS TO BE PROVEN

1. Petitioner lives with child and her father.
2. Petitioner intentionally hit child on child's buttocks by petitioner's hand.

### WITNESSES

1. PS worker-----
  - Petitioner said petitioner lives with child and her father.
  - Child told petitioner lives with her father.
2. PS Worker-----
  - What petitioner and child told regarding the incident.
- Police-----
  - What petitioner and child told regarding the incident.
- Therapist-----
  - What child told therapist.
- Mother of child-----
  - What child told her.
- Child-----
  - What happened.

### PHYSICAL EXHIBITS

1. Investigation Summary & police report
2. ISP, body map of injury or photo (with parental consent)  
---Police report,  
  
----Treatment notes, therapist's report.  
  
----Drawing by child on body map of injury.

## CHART OF ELEMENTS TO BE PROVEN CASE EXAMPLE

**What you are trying to prove:** Petitioner disciplined the child by hitting on the buttocks causing injures.

3. Child suffered a bruise on her buttocks.	3. PS worker----- <ul style="list-style-type: none"> <li>• What worker observed.</li> <li>• What was told by child, mother and petitioner.</li> </ul> Doctor----- <ul style="list-style-type: none"> <li>• What h/she found.</li> <li>• What child said.</li> </ul> Mother----- <ul style="list-style-type: none"> <li>• What she observed.</li> <li>• What child said.</li> </ul> Child----- <ul style="list-style-type: none"> <li>• Describe her bruise.</li> </ul>	3. ISP, medical report & photo  ---- Medical report, photo  ----Photo  ----Blank body map to draw @ hearing.
4. Category I <ul style="list-style-type: none"> <li>• A court petition is required under section 17 or 18 under the CPL.</li> <li>or</li> <li>• The child is not safe and a petition is needed for removal.</li> <li>or</li> </ul>	4. PS worker----- <ul style="list-style-type: none"> <li>• Explanation as to why case classified as category 1 and / or factors supporting score/ conclusion regarding risk.</li> <li>• Placement on central registry.</li> </ul>	4. Safety Assessment, <ul style="list-style-type: none"> <li>• Risk Assessment</li> <li>• Needs &amp; Strengths Assessment,</li> <li>• FIA 154,</li> <li>• FIA 153,</li> <li>• IPRI / SMI 718-2, pages 14-15(role codes).</li> <li>• Copy of court petition, if applicable.</li> </ul>

## **GUIDELINES FOR TESTIMONY**

### **Do's and Don'ts**

- DO prepare for the hearing! Review the events and facts about which you will be testifying. If you have any documents or notes which would help you refresh your memory, review those in advance. You may bring those materials with you to the hearing to help refresh your memory if necessary.
- DO speak clearly and loudly at the hearing.
- DO listen carefully to the questions asked you. If you don't understand the question, either ask for it to be repeated or ask for the question to be reworded. Don't let the other attorney make you feel like you appear to be dumb for making such a request. You are doing the smart thing and he or she knows it.
- DO take your time answering the questions so that you can give a thoughtful, considered answer.
- DO explain your answer if necessary. If a yes or no answer is demanded and you cannot answer truthfully with a yes or no, say so.
- DO answer only the question asked, then stop. DO NOT volunteer information, especially on cross-examination.
- DO NOT try to cover up a wrong answer. As soon as you realize you answered a question incorrectly, take the next opportunity to say so and give the correct answer.
- DO clarify an answer that was not clear as soon as you have an opportunity.
- DO restrict your answers to what facts you personally know of. You cannot testify about what someone else told you or your conclusions or opinions except in certain limited instances when you will be specifically asked to do so.
- DO NOT make up answers. If you do not remember, say, "That's all I recall" or "I do not recall."

## **GUIDELINES FOR TESTIMONY**

### **Do's and Don'ts**

- DO be polite at all times, even to the other attorney.
- DO NOT try to second-guess the questioner. DO NOT try to figure out whether your answer will help or hurt. Just answer the question to the best of your memory.
- DO NOT exaggerate.
- DO stop speaking when the other attorney objects. Then wait until you are told by the judge to continue speaking.
- DO give positive, definite answers if possible. Avoid saying, "I think", "I believe", "In my opinion", "I guess."
- DO NOT lose your temper.
- DO ask for a recess if necessary. If you are on the stand for some length of time and are becoming either tired, cross, nervous, angry. If you are giving careless answers or are feeling like you would be willing to say anything in order to leave the witness stand, turn to the judge and mention that you would like a five minute break. Remember that some attorneys, on cross-examination, will try to wear you out until you say things that are incorrect. DO NOT let this happen.
- DO NOT hedge or argue with the attorney.
- DO NOT nod or shake your head to answer. You must speak to make a record.
- DO watch for "trick" questions. One of the most popular is asking you whether you have talked to anybody about your testimony. Listen carefully to the way the question is asked, then answer it truthfully. Everyone knows that a good attorney talks to his witness before they testify and that you probably were interviewed not only the attorney but also other people about your knowledge of the case. Another trick question is whether you are being paid, thereby inferring that you are being paid to say certain things. NON-FIA employees will be paid a witness fee to compensate



## **GUIDELINES FOR TESTIMONY**

### **Do's and Don'ts**

them for missing work and traveling to the hearing. Accordingly, try to answer the question to make it clear that the fee is to defray your expenses, not “to buy” your testimony.

- DO remember that the purpose of cross-examination is to discredit your testimony. Be wary if the cross-examiner tries to make you feel that he/she is your friend.
- DO NOT let the cross-examiner use your fear of self-contradiction against you. If the questioner says you said something different earlier but you don't agree, say so. If you said it but you know it was incorrect, say so and give the correct answer. Everyone begins to remember the past more clearly and with more detail the longer they think and talk about it.
- DO answer only the questioner examining you or the judge. You are only required to cope with one attorney at a time.
- If you are asked for very specific facts: “On what date?” “How many feet?” “How many times?”, etc. and you can only give an approximate date or number, say so. “My best recollection was that it happened in September, 2004” or “I would estimate 6 feet.”
- DO be as specific and detailed in your answers as you can. DON'T assume anything. The Judge has no knowledge about what happened except what you and the other witnesses tell him or her, so try to tell what you know in such a way that they can visualize whatever you are testifying about.
- DO TELL THE TRUTH!

### **CONCLUSION**

Hopefully, this information and these tips will permit you to be more relaxed when you actually appear to testify.

## CHART OF ELEMENTS TO BE PROVEN CASE EXAMPLE

**What you are trying to prove:** Petitioner disciplined the child by hitting on the buttocks causing injures.

- Previously categorized as cat II and child's family does not voluntarily participate in services.

or

- CSC, or criminal child abuse first or second degree.

or

Category II

- Structured Decision Making tool properly characterized risk of future harm as high or intensive.

**DIRECT EXAMINATION OF**  
**PROTECTIVE SERVICE WORKER**

(Can be modified for any witness)

**Presented:**

**Q. Would you state your name and spell it for the record?**

**A.**

**Q. What is your educational background?**

**A.**

**Q. Where are you employed?**

**A.**

**Q. What is your position?**

**A.**

**Q. Did you participate in abuse and neglect training provided by the Agency?**

**A.**

**Q. What course did you attend?**

**A.**

**Q. How long have you been a Protective Service Worker?**

**A.**

**Q. How many Protective Service complaints have you investigated?**

**A.**

**Q. How many involved \_\_\_\_\_? (Type of case you have, physical, sexual, mental, neglect)**

**A.**

**Q. Where you assigned to investigate a complaint dated \_\_\_\_?**

**A.**

## **EXPUNCTION HEARING – ORDER OF PROCEDURE**

(Example)

### **A. Formal Opening by Administrative Law Judge (ALJ)**

1. Name of case.
2. Legal authority.
3. Identification of FIA representative and witnesses to be called.
4. Identification of the petitioner, petitioner's representative and witnesses to be called.
5. The petitioner's hearing request is read into the record by ALJ.
6. The petitioner's rights are explained to the petitioner by the ALJ.
7. A brief outline of the Order of the Proceeding.

### **B. Preliminary Matters**

1. Stipulations, amendments, motions, clarifications, etc.

### **C. Opening Statements by FIA Representative**

1. An outline of what FIA intends to prove. It is **not evidence** because it is not under oath or subject or cross examination.
2. An opening statement can be waived.

### **D. Opening Statement by the Petitioner or Representative**

1. An outline of what the petitioner intends to prove. It is not evidence because it is not under oath or subject to cross examination.
2. An opening statement can be waived.

**E. Presentation of Witnesses and Evidence by FIA Representative**

1. Each witness called by FIA is sworn in by the ALJ.
2. Direct examination of witness by FIA.
3. Cross examination of witness by the petitioner.
4. Additional redirect and re-cross examination as required.
5. FIA completes presentation of case and rests.

**F. Presentation of Witness and Evidence by the Petitioner or Representative.**

1. Each witness called by Petitioner is sworn in by the ALJ.
2. Direct examination of witness by Petitioner.
3. Cross examination of witness by FIA.
4. Additional redirect and re-cross examination as required.
5. The petitioner completes presentation of case and rests.

**G. FIA Closing Statement**

1. An outline of what FIA thinks it has proven. It is not evidence because it is not under oath or subject to cross-examination.

**H. Petitioner's Closing Statement**

1. An outline of what the petitioner thinks he/she has proven. It is not evidence because it is not under oath or subject to cross-examination.

**I. The Record is Formally closed by the ALJ**

**NOTE:** Not all ALJ's follow the same hearing procedure. These are the procedures followed by William D. Jenness, III.

**Q. Did you interview \_\_\_\_\_ (child's name)?**

**A.**

**Q. When did you interview \_\_\_\_\_ (child's name)?**

**A.**

**Q. Where did the interview take place?**

**A.**

**Q. Who was present?**

**A.**

**Q. What type of interview technique did you use?**

**A.**

**Q. Did \_\_\_\_\_ (child's name) have appropriate development and verbal skills?**

**A.**

**Q. What did \_\_\_\_\_ (child's name) tell you?**

**A.**

**Q. What did you observe?**

**A.**

**Q. Where were the \_\_\_\_\_ (bruises, welts, etc)?**

**A.**

**Q. Were the injuries consistent with what \_\_\_\_\_ (child's name) told you?**

**A.**

**Q. Did you take a photograph?**

**A.**

**Q. Are these the photographs you took?**

**A.**

**PROPOSE THE PHOTOGRAPHS AS AN AGENCY EXHIBIT.**

Continue to ask questions of the CPS worker to elicit relevant information that is necessary to prove your case – information and interviews with petitioner, other participants, medical reports, police reports, etc.

**Q. Are you required by agency policy to prepare an investigation report as a normal course of business?**

**A.**

**Q. Did you prepare an investigation report in for case?**

**A.**

**Q. Is this a copy of the report you prepared?**

**A.**

**PROPOSE THE REPORT AS AN AGENCY EXHIBIT.**

**Q. Did your investigation lead you to find by a preponderance of evidence that \_\_\_\_\_(abuse &/or neglect) occurred?**

**A.**

**Q. What section of the law (statute) and policy did you use in reaching your conclusion?**

**A.**

**Q. Is this a copy of the law and policy?**

**A.**

***(STOP HERE FOR PRE-JULY 1999 CASES)***

**Q. What other tools did you use to make your decision?**

**A. (Risk, N/S, Safety Assessments)**

**Q. Did you complete a Safety Assessment?**

**A.**

**Q. Is this a copy of the Safety Assessment you completed?**

**A.**

**Q. What safety concerns did you designate and why?**

**A.**

**PROPOSE THE SAFETY ASSESSMENT AS AN AGENCY EXHIBIT**

**Q. Did you complete a Family Assessment of Needs?**

**A.**

**Q. Did you use agency policy and definitions to complete the Family Assessment of Needs?**

**A.**

**Q. Is this a copy of the Family Assessment of Needs you completed?**

**PROPOSE THE FAMILY NEEDS ASSESSMENT  
AS AN AGENCY EXHIBIT.**

**Q. Did you complete a Risk Assessment?**

**A.**

**Q. Is this the Structured Decision Making tool required by the law?**

**A.**

**Q. Is this a copy of the Risk Assessment you completed?**

**A.**

**Q. Did you follow agency policy and definitions in the completion of the Risk Assessment?**

**A.**

**Q. Would you give a brief summary of the purpose of the Risk Assessment?**

**A.**

**PROPOSE THE POLICY AND DEFINITIONS AS AN AGENCY  
EXHIBIT (RE: RISK ASSESSMENT FOR CATEGORIES I, II, III)**



**PROPOSE THE RISK ASSESSMENT AS AN AGENCY EXHIBIT.**

**Q. Would you go over each of the questions and explain why you scored it the way you did? (If an override was used, ask for an explanation.)**

**A.**

**Q. Are you required under agency policy to use the highest score on either the abuse or neglect scale to establish the risk level?**

**A.**

**Q. What risk level was established?**

**A.**

**Q. What Category was required by agency policy?**

**A.**

**Q. What section of the law (statute) did you use in making the determination?**

**A.**

**Q. Did you place \_\_\_\_\_ (petitioner's name) on the Central Registry (IPRI) as a perpetrator of \_\_\_\_\_ (Cat I or II) (abuse or neglect).**

**PROPOSE THE I.P.R.I. AS AN AGENCY EXHIBIT**

- Therapist report / notes

## **EXPUNCTION HEARING – ORDER OF PROCEDURE**

(Example)

### **A. Formal Opening by Administrative Law Judge (ALJ)**

1. Name of case.
2. Legal authority.
3. Identification of FIA representative and witnesses to be called.
4. Identification of the petitioner, petitioner's representative and witnesses to be called.
5. The petitioner's hearing request is read into the record by ALJ.
6. The petitioner's rights are explained to the petitioner by the ALJ.
7. A brief outline of the Order of the Proceeding.

### **B. Preliminary Matters**

1. Stipulations, amendments, motions, clarifications, etc.

### **C. Opening Statements by FIA Representative**

1. An outline of what FIA intends to prove. It is **not evidence** because it is not under oath or subject or cross examination.
2. An opening statement can be waived.

### **D. Opening Statement by the Petitioner or Representative**

1. An outline of what the petitioner intends to prove. It is not evidence because it is not under oath or subject to cross examination.
2. An opening statement can be waived.

## **GUIDELINES FOR CROSS-EXAMINATION**

- **Golden rule of cross- examination is not to ask questions unless you know the answers.**
  - The risk is raising new, surprising issue, which no one is prepared to deal with.
- **Cross-examine only if there are specific objectives. It is an opportunity not a necessity.**
- **Limit cross-examination questions to issues that will not enhance your case.**
- **Do not argue with the witness.**
  - Save the arguments for closing arguments.
- **Do not expect a witness to break down and make an admission.**
  - This only happens on TV drama.
- **Closed-ended questions are emphasized in cross-examination.**
- **Leading questions are allowed, “You did hit the child, didn’t you?”**
- **Do not ask compound questions. Ask about only one fact or issue at a time.**
- **Start cross-examination on the strongest point you have.**
  - Once your witness is shown to be wrong, they are more likely to give open and truthful answers.

## **TECHNIQUES OF DIRECT EXAMINATION**

**Direct examination is the first questioning of a witness.**

The **purpose** of direct examination is to **prove the facts** of the case with sworn testimony and exhibits admitted through the witness.

- Question witnesses for their knowledge of the case. The focus should be in the answer, not the question.
  - Purpose of the question is to focus the attention of the witness on a specific area.
  - Let the witness tell the story.
  - The question is not evidence, the answer is.
- Question the witness in an order that makes sense and is easy to follow. There are two basic ways:
  - Chronological in time
  - Logical

**Chronological is usually best.**

There are two broad categories of questions: **Opened-ended and closed-ended.**

**Open-ended Questions** are emphasized in direct examination.

- You want the witness to tell the story in his or her own words. It makes it more believable. For example:
  - Ask the CPS worker, “**What did you do on this case?**”
  - Ask the petitioner, “**What did you do on the day of the dispute?**”

## **GLOSSARY OF TERMS & PHRASES USED IN CPS ADMINISTRATIVE HEARINGS**

### **(1) Collateral Estoppel:** AKA estoppel by judgement

When an issue has been determined between parties by a valid, final judgement, it may not be re-litigated between the same parties in any different, future lawsuit, litigation or hearing.

For the principle to apply, the previous action must be:

- (i) Between the same parties (the state and the petitioner)
- (ii) The party being estopped had a full and fair opportunity to litigate the issue in question (i.e.: there was a full hearing on the merits or the party pled guilty. It was **not** a no contest, consent to jurisdiction, or consent to judgement plea.)
- (iii) No appeal of the prior action is pending (i.e.: there is a final, valid judgement.)
- (iv) The basis of the prior judgement can be ascertained clearly, definitely and unequivocally, (i.e.: you have the exact same issue as was determined in the prior proceeding.)

### **(2) De novo Proceeding:**

A brand new hearing; a hearing as if it has not been heard before and as if no decision had been previously rendered. A court or ALJ hears the matter as a court of original jurisdiction and not appellate jurisdiction.

### **(3) Foundation:**

Preliminary questions to a witness to establish the admissibility of physical evidence. (i.e.: “laying a foundation” for admissibility requires the witness to testify that the document “is what it purports to be.”)

**(4) Hearsay Evidence:**

Testimony, in court or in a hearing, of a statement by a person who is not present.

The evidentiary value is based upon the credibility of the out of court 3<sup>rd</sup> party. Credibility cannot be evaluated since the 3<sup>rd</sup> party is not available for cross-examination.

Hearsay evidence is generally admissible in CPS expunction hearing per § 75 of the A.P.A if the trier of fact (judge) finds the matter to be relevant and credible. But the evidence has less weight (i.e.: less persuasive) because the out of court 3<sup>rd</sup> party is not available for cross-examination.

**(5) Leading Questions:**

Questions which instruct a witness how to answer or put words into the witness' mouth to be echoed back. (i.e.: ones which suggest to the witness the answer desired.)

Generally, leading questions should not be used on direct examination of a witness, unless the party has called a hostile witness or a witness identified with an adverse party.

Ordinarily, leading questions are permitted on cross-examination.

**(6) Open Ended Questions:**

Questions which do not suggest a particular answer.

**(7) Overrule:**

To refuse to sustain or recognize as sufficient an objection made in a hearing.

**(8) Preponderance of Evidence:**

Evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it. Evidence which as a whole shows that the fact sought to be proven is more probable than not.

Preponderance of evidence is not determined by the number of witnesses but by the greater weight of all the evidence.

**(9) Prima Facie Case:**

A case that will prevail until contradicted and overcome by other evidence.

**(10) Reconsideration:**

A paper review, not a new hearing. May be granted upon a showing of:

- (i) Misapplication of Law or Manual Policy
- (ii) Typographical, mathematical or other obvious errors in the hearing decision that effect substantial rights of the parties
- (iii) Failure of the ALJ to address other relevant issues in the hearing decision.

**(11) Re-hearing:**

A new, full hearing which may be granted if the original hearing record is inadequate for judicial review or there is newly discovered evidence that would effect the outcome of the original decision.

**(12) Relevance:**

Applying to the matter in question; evidence having any tendency to make the existence of any fact more probable or less probable than it would be without the evidence.

**(13) Sequester the Witnesses:**

To separate or isolate (i.e.: not allow witnesses to hear each other's testimony.)

**(14) Stipulation:**

Voluntary agreement between opposing parties concerning some relevant point so as to eliminate the need for proof or to narrow the range of litigable issues.

**(15) Subpoena Duces Tecum:**

A process by which the judge, at the request of a party, commands a witness who has in his possession or control some document or paper, to produce it at the trial or hearing.

**(16) Sustained:**



To grant, or agree with the objection. As when a judge sustains an objection to evidence or testimony.

**(17) Trier of Fact:**

Decision-maker as to the fact or, in CPS expunction hearing, the ALJ who has the exclusive obligation to make findings of fact based upon the hearing record (i.e.: decides the facts of the case.)

**(18) Voir dire the Witness:**

A phrase used when a witness is being asked to lay a foundation of evidence into the hearing record. The opposing party asks to question or “voir dire” the witness so as to assess the competency or possibly objectionable nature of the foundations.

**Closed-ended Questions** should be used sparingly on direct examination.

- Questions about a specific subject: **“Did you confirm abuse?”**
- In undisputed matters such as:
  - Witness’s name
  - Occupation
  - How long they worked on the job.
- When a witness has not given enough information:
  - **“What part of the body was hit?”**
  - **“How many times was the child hit?”**
  - **“Was an instrument used?”**
- Use them when a witness:
  - Digresses, discusses irrelevant information, or vilifies an opponent.
  - If a witness becomes evasive.
  - To refresh a witness’s recollection.  
**“Didn’t you tell me ‘such and such’?”**
  - For young children or the infirmed who tend to be less responsive to open-ended questions.

**Return to open-ended questions as soon as you have resolved the problem. Open-ended questions are the most credible.**

**Closed – ended questions on direct examination** are subject to objection if they are leading the witness. (The answer is incorporated in the question).

- **“The petitioner admitted hitting the child, didn’t he?”**
- You do not want to put words in the mouth of your witness. It detracts from their credibility.

**Do not ask compound questions.** A compound question asks about more than one issue.

- It is hard to answer and hard to follow.
- Ask one question at a time and make it short and concise.

**Putting Down the Foundation** is questioning witnesses to introduce exhibits.

The purpose of the question is to show that the document is what it purports to be and should be introduced through the person who prepared it.

- **“Did you prepare the investigation report?”**
- **“Is this the investigation report you prepared?”**

If the person who prepared the document is not available, a foundation must be put down to show how it was acquired.

- **“Did you request a medical report from the doctor?”**
- **“Did you receive a copy of the medical report?”**
- **“Is this the medical report you received?”**

Proposed the document as an exhibit after the foundation has been put down. Give a copy to the ALJ and the petitioner.

**Admission of photographs – remember a picture is worth a thousand words.**

- Put down a foundation the same way you do for a document.
  - **“Did you take this picture of the injury?”**
  - **“Is this the picture you took?”**
  - **“Is it an accurate representation of the injury you observed?”**
- If the picture was taken by someone else, put down a foundation to show how it was acquired and if it was consistent with what the witness observed.

**E. Presentation of Witnesses and Evidence by FIA Representative**

1. Each witness called by FIA is sworn in by the ALJ.
2. Direct examination of witness by FIA.
3. Cross examination of witness by the petitioner.
4. Additional redirect and re-cross examination as required.
5. FIA completes presentation of case and rests.

**F. Presentation of Witness and Evidence by the Petitioner or Representative.**

1. Each witness called by Petitioner is sworn in by the ALJ.
2. Direct examination of witness by Petitioner.
3. Cross examination of witness by FIA.
4. Additional redirect and re-cross examination as required.
5. The petitioner completes presentation of case and rests.

**G. FIA Closing Statement**

1. An outline of what FIA thinks it has proven. It is not evidence because it is not under oath or subject to cross-examination.

**H. Petitioner's Closing Statement**

1. An outline of what the petitioner thinks he/she has proven. It is not evidence because it is not under oath or subject to cross-examination.

**I. The Record is Formally closed by the ALJ**

**NOTE:** Not all ALJ's follow the same hearing procedure. These are the procedures followed by William D. Jenness, III.